



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Transit Administration**

**[Docket No. FTA-2011-0054]**

#### **Title VI; Final Circular**

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of availability of final Circular.

**SUMMARY:** The Federal Transit Administration (FTA) has placed in the docket and on its Web site, guidance in the form of a Circular to assist grantees in complying with Title VI of the Civil Rights Act of 1964. The purpose of this Circular is to provide recipients of FTA financial assistance with instructions and guidance necessary to carry out the U.S. Department of Transportation's Title VI regulations (49 CFR part 21).

**EFFECTIVE DATE:** The effective date of the Circular is October 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** For program questions, Amber Ontiveros, Office of Civil Rights, Federal Transit Administration, 1200 New Jersey Ave. SE, Room E54-422, Washington, D.C., 20590, phone: (202) 366-4018, fax: (202) 366-3809, or e-mail, [Amber.Ontiveros@dot.gov](mailto:Amber.Ontiveros@dot.gov). For legal questions, Bonnie Graves, Office of Chief Counsel, same address, room E56-306, phone: (202) 366-4011, or e-mail, [Bonnie.Graves@dot.gov](mailto:Bonnie.Graves@dot.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Availability of final circular**

This notice provides a summary of the final changes to the Title VI Circular and responses to comments. The final Circular itself is not included in this notice; instead, an

electronic version may be found on FTA's Web site, at [www.fta.dot.gov](http://www.fta.dot.gov), and in the docket, at [www.regulations.gov](http://www.regulations.gov). Paper copies of the final Circular may be obtained by contacting FTA's Administrative Services Help Desk, at (202) 366-4865.

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## **I. Overview**

FTA is updating its Title VI Circular, last revised in 2007, to clarify what recipients must do to comply with the U.S. Department of Transportation (DOT) Title VI

regulations. This notice provides a summary of changes to FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for FTA Recipients,” addresses comments received in response to the September 29, 2011, Federal Register notice (76 FR 60593), and provides information regarding implementation of the final Circular. The final Circular, 4702.1B, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients” becomes effective on October 1, 2012, and supersedes FTA Circular 4702.1A.

FTA conducted extensive outreach related to the proposed circular. FTA sponsored Information Sessions in five cities around the country regarding the proposed revisions to the Title VI Circular and proposed a new Environmental Justice Circular (see docket FTA-2011-0055 for more information on the proposed and final Environmental Justice Circular). The meetings provided a forum for FTA staff to make presentations about the two proposed circulars and allowed attendees an opportunity to ask clarifying questions. In addition, FTA participated in various conferences occurring in October and November 2011, and hosted several webinars. FTA received approximately 117 written comments to the docket related to the proposed Title VI Circular from providers of public transportation, State Departments of Transportation, advocacy groups, individuals, metropolitan planning organizations, and transit industry groups. Some comments were submitted on behalf of multiple entities.

One important change to the revised Circular involves removal of several references to environmental justice (EJ) contained in FTA Title VI Circular 4702.1A. Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” was signed by President Clinton on February

11, 1994. Subsequent to issuance of the Executive Order, DOT issued an internal Order for implementing the Executive Order, which DOT recently updated. The DOT Order (Order 5610.2(a), “Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” 77 FR 27534, May 10, 2012) describes the process the Department and its modal administrations (including FTA) will use to incorporate EJ principles into programs, policies and activities. The DOT Order does not provide guidance to FTA grantees on what is expected regarding integrating EJ principles into the public transportation decision-making process. FTA had not previously published separate and distinct EJ guidance for its grantees, but instead included EJ concepts in Title VI Circular 4702.1A.

Several instances of Title VI and EJ issues raised by FTA grantees led FTA to initiate a comprehensive management review of the agency’s core guidance to grantees in these and other areas of civil rights responsibilities for public transportation. Based on that review, FTA determined a need to clarify and distinguish what grantees should do to comply with Title VI regulations; and, separately, what grantees should do to facilitate FTA’s implementation of Executive Order 12898.

Given the above, FTA removed most references to environmental justice from the final Title VI Circular 4702.1B in order to clarify the statutory and regulatory requirements for compliance with Title VI. In addition to the revised Title VI Circular, FTA has also published, in the July 17, 2012, Federal Register, a notice of availability for a new final EJ Circular 4703.1, “Environmental Justice Policy Guidance for Federal Transit Administration Recipients” (Docket number FTA-2011-0055) (77 FR 42077, July 17, 2012). The EJ Circular is available on FTA’s website here:

[http://www.fta.dot.gov/legislation\\_law/12349\\_14740.html](http://www.fta.dot.gov/legislation_law/12349_14740.html). The EJ Circular is designed to provide grantees with a distinct framework to assist them as they integrate principles of environmental justice into their public transportation decision-making processes, from planning through project development, operation and maintenance. FTA expects the additional clarification provided by both Circulars will provide grantees the guidance and direction they need to properly incorporate both Title VI and environmental justice into their public transportation decision-making. FTA encourages interested parties to review both Federal Register notices and both circulars.

## **II. Implementation**

A number of commenters had questions about the timing of implementing the new circular, including which circular they should use if their Title VI Program is due within a short time of the effective date of the new circular, and whether Title VI Programs would have to be updated to comply with new requirements.

### **A. Expiration Dates.**

Recipients with Title VI Programs due to expire prior to October 1, 2012 must submit their Programs to FTA prior to October 1, 2012, and the Programs shall be compliant with Circular 4702.1A. Recipients with Title VI Program expiration dates between October 1, 2012 and March 31, 2013 must submit a Title VI Program that is compliant with Circular 4702.1B by April 1, 2013. This grace period will allow recipients to update their system-wide standards and policies, as well as their major service change and disparate impact policies, as applicable, and have their board of directors or appropriate entity or official(s) responsible for policy decisions approve the Title VI Program prior to submission. On or about October 1, 2012, FTA will post

information on our Title VI web page regarding which recipients are in this group, and we will also reach out to each recipient to ensure awareness of the requirement. In addition, FTA will adjust the expiration dates of all Title VI Programs in order to provide for an orderly, staggered submission of Title VI Programs. On or about October 1, 2012, FTA will publish information on our Web page related to future due dates and expiration dates of Title VI Programs.

B. System-wide Standards and Policies.

The final Circular requires all fixed route transit providers to set system-wide standards and policies, and requires all transit providers that operate 50 or more fixed route vehicles in peak service and are located in an urbanized area of 200,000 or more in population to establish major service change and disparate impact policies. These standards and policies must be approved by the board of directors or appropriate governing entity or official(s) responsible for policy decisions. As stated above, fixed route transit providers with Title VI Programs expiring between October 1, 2012, and March 31, 2013, will be provided a grace period in which to submit Title VI Programs that comply with the new Circular 4702.1B, and this will include updating or establishing these standards and policies. All other fixed route transit providers will be required to establish or update their standards and policies and submit them into TEAM by March 31, 2013. In addition, Title VI Programs due to expire on or after April 1, 2013 must comply with the reporting requirements of Circular 4702.1B and therefore will need to include their new or updated system-wide standards and policies in their next Title VI Program submission.

C. Service Equity Analyses.

Providers of public transportation that operate 50 or more fixed route vehicles in peak service and are located in an urbanized area of 200,000 or more in population are required to conduct service equity analyses for major service changes. Transit providers with major service changes scheduled between October 1, 2012 and March 31, 2013 may follow the service equity analysis guidance provided in FTA Circular 4702.1A. FTA acknowledges that major service changes are often planned many months in advance, and transit providers may have already begun to conduct equity analyses for upcoming changes. In addition, the new circular requires a public participation process and board of directors approval for defining major service changes and adopting a disparate impact policy, as well as board approval of the analysis; these processes will take time. A transit provider may conduct a service equity analysis consistent with the new Circular for major service changes occurring prior to April 1, 2013, but is not required to do so. All major service changes occurring on or after April 1, 2013 must be analyzed with the framework outlined in the new Circular, 4702.1B.

#### D. Conducting Surveys.

Providers of public transportation that operate 50 or more fixed route vehicles in peak service and are located in an urbanized area of 200,000 or more in population are required to collect and report demographic data through customer surveys at least once every five years (see chapter IV, section 5b). Transit providers that have not conducted passenger surveys in the last five years will have until December 31, 2013, to conduct these surveys.

#### E. Training

FTA will conduct ongoing training through webinars and in-person presentations in order to ensure recipients and subrecipients understand the requirements of the new circular.

### **Chapter-by-Chapter Analysis**

#### **A. General Comments.**

This section addresses comments that were not directed at specific chapters, but to the Circular as a whole.

A number of commenters made suggestions or recommendations that were outside the scope of the circular, for example, suggestions related to meeting obligations to affirmatively further fair housing, questions related to specific situations, and others. Some commenters asked about other protected classes, specifically the prohibition of discrimination on the basis of age, sex and disability. There are nondiscrimination statutes for all of those areas, but they are not part of Title VI. Title VI prohibits discrimination on the basis of race, color, and national origin only. All comments such as these are beyond the scope of this Circular and are not addressed here.

Commenters were generally supportive of FTA's proposal to develop separate Circulars for Title VI and environmental justice, and also supportive of the changes FTA proposed to FTA Title VI Circular 4702.1A. Some commenters were concerned about the volume of new material, with the addition of appendices to Title VI Circular 4702.1B, while others expressed concern about the costs of implementation. The appendices, while voluminous, are designed to make it easier for recipients to comply with Title VI requirements, as they demonstrate acceptable analyses and provide examples of what FTA expects. As noted in Chapter IV of the chapter-by-chapter analysis, we have



addressed the cost concerns by amending the proposed threshold for the more comprehensive Title VI reporting requirements for transit providers, amending the survey requirement, and amending the number of transit amenities that must be monitored.

One important change made throughout the final Circular is that we have, where applicable, included the text of the DOT Title VI regulation that applies to the requirement. FTA Title VI Circular 4702.1A often cites the regulation, but does not quote or summarize the text. Commenters agreed it is an enhancement to include the text or a summary of the regulation so they understand the nexus between the regulation and the requirements in the Circular.

Some commenters made suggestions about language choice, such as being careful about the usage of “should” and “shall” in order to distinguish between recommended and required actions. FTA has reviewed the final Circular and made revisions as appropriate. Some commenters suggested that FTA use the phrase “in a non-discriminatory manner” instead of the phrase “without regard to race, color, or national origin,” as the second phrase, while consistent with the regulation, implies that if a recipient makes decisions without regard to race, color, or national origin, there may be a discriminatory effect. FTA has carefully reviewed the final Circular and determined that the use of these phrases depends on the context. We have made revisions where appropriate.

Several commenters stated that FTA should coordinate or collaborate with the Federal Highway Administration (FHWA) to ensure one set of requirements, especially for metropolitan planning organizations (MPOs) and State Departments of Transportation that receive funds from both agencies. FTA and FHWA are working to identify common

reporting requirements so that States and MPOs need only submit information once that will satisfy FTA and FHWA requirements.

One commenter asserted that Federal agencies lack the authority to implement regulations prohibiting disparate impact, and that FTA should be reassessing the implementation of DOT's Title VI regulation. Specifically, the commenter pointed out that the U.S. Supreme Court in *Alexander v. Sandoval*, 532 U.S. 275 (2001), found no private right of action to allow private lawsuits based on evidence of disparate impact. However, as the U.S. Department of Justice advised Federal agencies in late 2001, "although *Sandoval* foreclosed private judicial enforcement of Title VI disparate impact regulations, it did not undermine the validity of those regulations or otherwise limit the authority and responsibility of Federal grant agencies to enforce their own implementing regulations." (See, <http://www.justice.gov/crt/about/cor/coord/vimanual.php>). Therefore, the U.S. DOT's disparate impact regulations continue to be a vital administrative enforcement mechanism.

#### B. Chapter I – Introduction and Background

Chapter I of Circular 4702.1A is entitled, "How to Use This Circular." The content of this chapter has been eliminated or moved to other chapters as appropriate. Some commenters expressed a preference for keeping the reference chart found in Chapter 1 of Circular 4702.1A; FTA has determined that the Table of Contents is sufficient for directing readers to the information applicable to their entity (i.e., transit provider, State, or MPO). Chapter I of the final Circular 4702.1B is an introductory chapter covering general information about FTA, how to contact us, the authorizing legislation for FTA programs generally, information about FTA's posting of grant

opportunities on Grants.gov, definitions applicable to the Title VI Circular, and a brief history of environmental justice and Title VI. We have moved the table describing similarities and differences between Title VI and environmental justice, found in Appendix M of the proposed circular, to this chapter. Where applicable, we have used the same definitions found in rulemakings, other Circulars, and DOT Orders to ensure consistency.

Some commenters noted that low-income populations are not a protected class and thus references to low-income should be removed from the Title VI Circular. FTA has retained the references to low-income populations only in the service and fare equity analysis section in Chapter IV. Addressing low-income populations in these analyses assists FTA in meeting its obligation to identify and address environmental justice concerns. Further, FTA received many comments to the proposed EJ Circular regarding whether the EJ Circular required a separate analysis on service and fare equity from that required under Title VI. FTA considered these comments and decided that issues related to service and fare equity analyses should be consolidated in a single location in the final Title VI Circular. Consolidating FTA's guidance on service and fare equity analyses in the Title VI Circular will provide clarity to recipients and prevent duplication of efforts.

In the final circular, in response to commenters as well as experiences over the past year, FTA has removed from the Circular the definitions of adverse effect and disproportionate high and adverse effect, which are environmental justice terms. Instead, we have included a definition of "disproportionate burden," and applied this term to service and fare equity analyses for low-income populations. As discussed further in Chapter IV, FTA will require recipients to perform separate equity analyses for minority

and low-income populations for service and fare changes, but we have clarified and streamlined this process.

We have modified the definition of “disparate impact” for clarity. We decline to add a definition for “equity” or “service” in the definitions section, but we have added significant text in Chapter IV (as discussed below) to more clearly describe the steps in a service equity analysis. Some commenters indicated that FTA’s definition of “Limited-English Proficient,” (LEP) which includes individuals who speak English less than very well, not well, or not at all, was not consistent with the U.S. Census data. The Census Bureau explained to State and local governments in 2009 that LEP includes the “less than very well” category. See U.S. Census Bureau American Community Survey, What State and Local Governments Need to Know, at 12, n. 8, (Feb. 2009),

<http://www.census.gov/acs/www/Downloads/handbooks/ACSstateLocal.pdf>.

Individuals who speak English “well” (or “less than very well”) are considered to have limited-English proficiency. Therefore, FTA’s proposed language is correct and we have not changed it.

Several commenters noted possible inconsistencies with the definitions of “minority” and “minority populations,” which FTA did not propose changing. FTA has confirmed that the definition of “minority” included in the final Circular is the same definition used by the Office of Management and Budget (OMB), which provides that these categories are the minimum set for data on race for Federal civil rights compliance reporting. See OMB’s Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity.

Several commenters noted the definition for “low-income,” which FTA did not propose changing, was not consistent with other Federal agencies’ definitions. The definition is the same definition DOT uses for purposes of addressing environmental justice concerns, so we have retained the existing definition in order to maintain consistency within the Department. However, recipients may use a more inclusive definition of low-income, e.g., 150% of poverty level, or incomes at a certain percentage of median household income, etc., if they choose, provided the threshold is at least as inclusive as the U.S. Department of Health and Human Services (HHS) poverty guidelines. A few commenters requested that FTA define the term “low-income transit route;” we have limited the application of “minority transit route” to service monitoring and are not using the definition for service equity analyses, so decline to provide a definition of low-income transit route. FTA has ensured that the definitions for “low-income,” “minority,” “low-income populations” and “minority populations” are the same in both the environmental justice and Title VI Circulars. Some commenters expressed a preference for identifying minority populations based on shared travel patterns rather than by living in geographic proximity. The definition of “minority populations” is a definition used in other DOT documents, notably the DOT Order on Environmental Justice, and we are retaining the definition for Departmental consistency. However, as explained in the service equity section, where recipients have ridership data, it may be more appropriate to conduct analyses on the basis of that data instead of residential Census data.

FTA received several comments on its proposal to reinstate the definition of “minority transit route,” a term removed during the 2007 Circular revision. We proposed

some added flexibility to the definition, allowing recipients to base the determination on route mileage, demographics, or ridership. In response to comments, we have made clarifying changes to this definition. A “minority transit route” is one in which at least one-third of the revenue miles are located in a Census block or block group, or traffic analysis zone where the percentage minority population is greater than the percentage minority population in the service area. Recipients may supplement that data if they have ridership data and adjust route designations accordingly. For example, a commuter bus that picks up passengers in generally non-minority areas and then travels through predominantly minority neighborhoods but does not pick up passengers who live closer to downtown might be more appropriately classified as a non-minority route, even if one-third of the route mileage is located in predominantly minority Census tracts or block groups. On the other hand, a light rail line may carry predominantly minority passengers to an area where employment centers and other activities are located, but the minority population in the surrounding Census tracts or block groups does not exceed the area average. This route may be more appropriately classified as a minority transit route. Chapter IV of the Circular, as well as the appendices, includes information regarding the practical application of minority transit routes in service monitoring.

Some commenters had suggestions related to the definition of “predominantly minority area,” which FTA did not propose changing. The definition provides that a predominantly minority area is a geographic area, such as a neighborhood, Census tract, or traffic analysis zone, where the proportion of minority persons residing in that area exceeds the average proportion of minority persons in the recipient’s service area. In response to comments, we have added the term Census block groups to the list of

geographic areas, but note the definition uses the phrase “such as,” so the list is not exhaustive. Commenters asked that FTA allow recipients to define a predominantly minority area; the definition in the circular is consistent with the definition of minority transit route, and we prefer to maintain that consistency. Commenters suggested that the definition include neighboring geographic areas, but neighboring geographic areas would be independently evaluated against the minority population in the service area.

Several commenters asked whether section 5310 non-profit subrecipients are transit providers. For purposes of this circular, FTA considers section 5310 subrecipients to be transit providers. However, when a non-profit section 5310 subrecipient provides closed-door service to its own clients, FTA considers these operators to be demand-responsive providers and not subject to the requirements of Chapter IV. As subrecipients, these providers may adopt the Title VI Program of the primary recipient that passes funds through to them, or they may develop their own Title VI Program that is compliant with Chapter III. Note that some section 5310 subrecipients are public entities that provide fixed route service, and in that case, the provider will have to comply with Chapter IV.

As a result of a number of comments to the docket related to service standards and reporting thresholds, FTA is adding definitions for “demand response,” “fixed route,” and “non-profit.” Discussion of how these terms relate to service standards and reporting thresholds are included in the section describing the revisions to Chapter IV.

We proposed using the term “recipient” to mean any recipient, whether a direct recipient, a designated recipient, a primary recipient, or a subrecipient. Some commenters objected to this practice, stating it is confusing, while other commenters

asked that FTA consolidate or simplify the various types of recipients. In the circular we have only used the term “recipient” when we mean all recipients – when we are specifically addressing the requirements for a specific type of recipient, we use that term. When addressing requirements for all recipients, including subrecipients (as in Chapter III), it is simpler to use one term.

A number of commenters stated that the definition of “service area,” which refers to the geographic area in which a transit agency is authorized to operate by “local laws” should instead refer to “its charter.” We have made this change. One commenter indicated that the definition seemed to exclude regional service areas that cross state lines; however, the definition covers several different scenarios and we believe this one is covered.

Finally, this chapter includes a section describing environmental justice that references the EJ Circular that FTA published in July, 2012. This section provides a permanent cross-reference to that guidance. Commenters were supportive of this section and stated the discussion was helpful. In addition, we have moved the chart that was in Appendix M of the proposed Circular to this chapter, in order to have all the environmental justice information in one place.

#### C. Chapter II – Program Overview

We proposed amending some of the content of this chapter. As previously stated, we moved the definitions to Chapter I. Chapter II starts with the Title VI program objectives found in Circular 4702.1A and is followed by statutory and regulatory authority, as well as additional authority for the policies, requirements and recommendations stated in the Circular. In response to comments, we have added



language to section 2 following the discussion of the Civil Rights Restoration Act of 1987, stating that compliance with the Circular does not relieve the recipient from the requirements and responsibilities of DOT's Title VI regulation. In other words, the recipient may engage in activities not described in the Circular, such as regional information systems, one-call centers, ridesharing programs, or roadway incident response programs. FTA notes that the Civil Rights Restoration Act of 1987 clarified that Title VI includes all programs and activities of Federal aid recipients. The Circular only provides guidance on the transit-related aspects of an entity's activities. Recipients are responsible for ensuring that all of their activities are in compliance with the DOT Title VI regulation. Consistent with FTA's goal of separating Title VI and EJ and developing the EJ Circular, we removed references to environmental justice. We proposed moving the "determination of deficiencies" subsection in the Reporting Requirements section and the Determinations section to Chapter VIII, Compliance Reviews. FTA has adopted these changes in the final circular.

In the existing Reporting Requirements section, as well as in other places throughout Circular 4702.1A, there is a statement that recipients are required to submit Title VI Programs every three years, or every four years in the case of metropolitan planning organizations (MPOs) that are direct recipients of FTA funds. We proposed amending the reporting requirement so that all recipients are required to submit a Title VI Program every three years. Some MPOs objected to this proposal, stating their planning cycles are four-year cycles; however, FTA believes all recipients should report on the same three-year schedule for purposes of consistency. We proposed amending the Reporting Requirements section further by including a requirement that a recipient's

board of directors or appropriate governing entity approve the Title VI Program before the recipient submits it to FTA. Most commenters agreed that this requirement would provide more accountability and awareness of Title VI requirements and compliance, while some stated this requirement would be time-consuming, onerous, and could over-politicize the Title VI Program, and requested alternatives, such as sign-off by a CEO or other official. FTA expects the requirement for board of directors or appropriate governing entity approval will add clarity and transparency to implementation of the Title VI Program at the local level, and we have adopted this proposal. We have clarified that the official(s) approving the Title VI Program should be the official(s) responsible for making policy decisions for the agency. We would note that a board of directors meeting is a public meeting, and approval of the Title VI Program in a public manner ensures the Title VI Program is a public document. Thus, having the Board chair and general manager jointly sign off on a Title VI Program, or delegating approval to an advisory committee, as suggested by some commenters, would not meet the transparency objective FTA is seeking. Recipients will be required to submit, with the Title VI Program, a copy of the Board resolution, meeting minutes, or similar documentation as evidence that the board of directors or appropriate governing entity has approved the program.

Several commenters stated there should be a public participation requirement in the development of the Title VI Program. FTA declines to make this a requirement; some elements of the Title VI Program, such as those related to service and fare equity analysis, require varying levels of public participation. In addition, as stated above, the new requirement that a Title VI Program be approved by officials responsible for policy

decisions, such as a board of directors or equivalent entity, necessarily requires a public notification process, which FTA believes is sufficient.

Finally, in response to numerous questions and comments about contractors, we have added a section to this chapter regarding the applicability of the Circular to contractors. There were several questions about the difference between subrecipients and contractors, and the reporting responsibilities of each, and one request to provide a definition of contractor in the Circular. While both subrecipients and contractors “stand in the shoes” of the recipient, the reporting requirements are different. When a primary recipient passes funds through to a subrecipient, the subrecipient is responsible for developing its own Title VI Program, although it may adopt all or certain elements of the primary recipient’s Title VI Program. In accordance with the DOT Title VI regulation, the subrecipient is also responsible for reporting its Title VI compliance to the entity from which it receives funds, and that entity must monitor the compliance of the subrecipient. A contractor, on the other hand, such as an entity that contracts with a city to provide transit service, does not develop its own Title VI Program; it complies with the recipient’s Title VI Program, and the recipient ensures the contractor’s compliance. This same principle applies to subcontractors – subcontractors must comply with the recipient’s Title VI Program, they do not develop their own Title VI Programs. Because the term “contractor” has a generally accepted meaning, we decline to add a definition in the Circular.

#### D. Chapter III – General Requirements and Guidelines

Chapter III in Circular 4702.1A is “Requirements for Applicants.” We proposed eliminating the one-page chapter dedicated to applicants, and consolidating this

information into what is included in Chapter IV of Circular 4702.1A. Thus, Chapter III in Circular 4702.1B has the same name as Chapter IV in Circular 4702.1A: “General Requirements and Guidelines” and includes content from Chapters III and IV of Circular 4702.1A. Commenters suggested amending the requirements for first-time applicants, but these requirements are consistent with U.S. Department of Justice regulations at 28 CFR Section 50.3, so we decline to make further changes to this section.

We proposed keeping much of the content of Chapter IV of Circular 4702.1A in this chapter, but we reformatted the chapter to provide more clarity. Chapters III, IV, V and VI, which describe the specific requirements for different types of recipients’ Title VI Programs, follow the same format. Each of these chapters starts with an introduction and some general information. Following that is the requirement to prepare and submit a Title VI Program. The section describing the Title VI Program, in each chapter, cites the regulation and includes the regulatory text or a summary of the regulatory text. It provides information on Board or other policy-making governing entity approval of the Title VI Program. It then lists the elements required in the Title VI Program for that type of recipient. The sections following the Title VI Program submission requirements describe in more detail what FTA expects, and provide direction to assist recipients with compliance. Commenters expressed support for the changes FTA made to the format of the Circular.

Section (4) of Chapter III outlines the basic requirements for submitting a Title VI Program, and provides the list of elements that must be in every recipient’s (and subrecipient’s) Title VI Program. Since Chapter III applies to all recipients, we include in this chapter information on how to upload a Title VI Program into FTA’s

Transportation Electronic Award Management (TEAM) system. The Title VI Program must be uploaded to TEAM no fewer than sixty calendar days prior to the date of expiration of the previously approved Title VI Program. This is a new requirement, but FTA has previously asked for voluntary submission of revised Title VI Programs thirty days in advance of expiration of the previously approved Title VI Program. As discussed in the Implementation plan, above, on or about October 1, 2012, FTA will post on its website information about each recipient's new "due date" and "expiration date."

Providing an orderly and staggered submission of Title VI Programs will enable FTA to review Title VI Programs more quickly and provide technical assistance as needed to ensure recipients are submitting Title VI Programs on which FTA can concur. This section also notes how the status of a recipient's Title VI Program will be noted in TEAM. The three status determinations are "concur," "in review" and "expired." This is a revision to our proposed determinations of "approval," "conditional approval," "pending," and "expired." This is a management tool that will allow FTA to more accurately determine when a Title VI Program is up-to-date. We proposed removing the "eliminating redundancy" subsection in the existing Circular, as we have determined that recipients must include all required information in each Title VI Program submission. One commenter objected to removal of this provision; we continue to believe that recipients must submit a complete Title VI Program every three years, even if there are elements that are unchanged.

We proposed continuing the reporting requirement exemption for the University Transportation Center Program, National Research and Technology Program, Over the Road Bus Accessibility Program and Public Transportation on Indian Reservations

program. We also included a new provision that FTA may exempt a recipient, upon receipt of a request for waiver submitted to the Director of the Office of Civil Rights, from the requirement to submit a Title VI Program, or from some elements of the Title VI Program. Commenters asked about what sort of situation would justify an exemption; there may be unique situations that justify an exemption, and FTA wishes to have this flexibility. The absence of the requirement to submit a Title VI Program does not obviate the underlying obligations to comply with Title VI.

FTA received several comments on section (4) of Chapter III. Some commenters wanted to know what the penalty would be for not submitting an updated Title VI Program the proposed 30 days prior to expiration. A recipient who submits its Title VI Program after its due date runs the risk of having draw-down privileges suspended, or grants not processed. Further, a Title VI Program can only be in “in review” status for 60 days, so it is in the best interest of the recipient to submit the Program 60 days prior to expiration. In the event it takes longer than 60 days for FTA to review a Title VI Program, the status will remain “in review” until FTA has completed its review, although FTA expects that Title VI Programs will be reviewed within this time period. In the event a submitted Title VI Program does not meet the requirements of the Circular and the problems are not corrected by the expiration date, the status will change to “expired” and draw-down privileges may be suspended and grant processing could be impacted. In response to comments that FTA should require recipients to submit Title VI Programs annually for review, an annual submission cannot be effectively administered by either recipients or FTA. However, FTA can request information from recipients at any time if FTA has concerns about Title VI compliance.

Some commenters asked about subrecipient submission of Title VI Programs to primary recipients, and others questioned the feasibility of including subrecipient Title VI Programs in the primary recipient's submission to FTA. Primary recipients may set a three-year schedule for their subrecipients that may or may not conform to the primary recipient's three-year reporting schedule to FTA. This will allow primary recipients with numerous subrecipients to stagger those submissions. In response to comments, FTA has amended the reporting requirement to remove the provision about including copies of subrecipient's Title VI Programs when primary recipients submit their Title VI Programs to FTA. FTA agrees that it can review subrecipient Programs during State Management Reviews, Triennial Reviews, and Title VI Compliance Reviews of primary recipients. Some commenters suggested that requiring all subrecipients to complete a Title VI Program is burdensome and may discourage potential subrecipients from applying for Federal funding, while others requested that subrecipients receiving small amounts of funds not be subject to Title VI reporting. All subrecipients of Federal funding are required to comply with Title VI, so we decline to remove the reporting requirement; however, recipients and subrecipients that provide demand response service, including vanpools, general public paratransit, ADA complementary paratransit, and, as discussed above, non-profit entities that receive section 5310 funds solely to serve their own clientele (i.e., closed-door service), are only required to comply with the Chapter III requirements. Further, all subrecipients may choose to adopt the primary recipient's notice to beneficiaries, complaint procedures and complaint form, public participation plan, and language assistance plan. We have added language to this section to clarify this.

The remainder of Chapter III consists of detailed descriptions of each element of a Title VI Program. In regard to the requirement to develop and post a notice for beneficiaries about their rights under Title VI, commenters asked for suggestions regarding where the notice should be posted, specifically which locations are required and which are recommended; requested that the dissemination should include non-passengers; and that the notice include other protected classes, such as age, gender and disability. In response, FTA has provided that at a minimum, the notice must be available on a recipient's Web site and in public areas of its offices. We encourage recipients to post notices at stations or stops, and/or on transit vehicles. FTA has no objection to recipients including a general non-discrimination provision in their Title VI notices, as long as it is clear which groups are protected under Title VI.

Commenters requested that documentation related to Title VI investigations, complaints and lawsuits be made readily available to the public. This information must be reported in all recipients' and subrecipients' Title VI Programs, which require Board or other policy decision-making entity approval, which means the entire Title VI Program is available to and may be requested by members of the public. We made one change to section 6, Requirement to Develop Title VI Complaint Procedures and Complaint Form: a requirement to post the complaint form and complaint procedures on the recipient's Web site. This will provide better access to individuals who want to file a complaint.

FTA proposed providing significantly more guidance in the public participation section than what is found in Circular 4702.1A, while still allowing wide latitude for recipients to determine how, when, and how often to engage in public participation activities, and which specific measures are most appropriate. The Circular references the



public participation requirements of 49 U.S.C. Sections 5307(b) and 5307(c)(1)(I) (as amended by MAP-21, Public Law 112-141, July 6, 2012) as well as the joint FTA/FHWA (Federal Highway Administration) planning regulations at 23 CFR part 450. This section also cross-references FTA's EJ Circular 4703.1, which has a chapter devoted to effective public participation practices.

FTA received a number of comments on this section. In response to comments, we have changed the title of this section from "public involvement" to "public participation," and replaced the word "involvement" with "participation" or "engagement" as appropriate. Several commenters asked for clarification of terms such as "consider" and "respond to" the needs of minority populations; unless otherwise defined, words have their generally understood meaning. Several commenters were concerned with language in this section that gives recipients wide latitude in part based on their available resources, stating this would allow agencies the discretion to budget inadequate resources for these activities. Given the wide variation in recipients' and subrecipients' budgets and size of populations served, it is clear to FTA that resources should be a consideration. Certainly it is not the only consideration, and FTA lists a number of factors recipients should consider in developing their public participation plans. Commenters asked FTA to define what the minimum requirements are for public participation, how transit providers would be held accountable for implementing their public engagement plan, and suggested that implementing the proposed strategies for public participation would require significant business process reengineering. In response, FTA will review the public engagement plan and its implementation when reviewing the Title VI Program triennially; as for minimum requirements, as stated above

and in the Circular, recipients should take a number of factors into consideration when developing their public participation plans, including the types of activities under consideration, the population affected, and the resources available. Recipients should already be engaging in outreach activities designed to involve minority and LEP populations in activities that have a public participation requirement, and should consider that there are statutory and regulatory requirements for public participation.

Commenters suggested that FTA provide more guidance to recipients in drafting public participation plans, asked whether the plan is supposed to be process or outcome oriented, and suggested that FTA should require recipients to engage in efforts to reach people in the service area who are not passengers of the transit system. In response, FTA's EJ Circular 4703.1 provides detailed guidance on public participation strategies, and we have included a reference to the EJ Circular in this section. Public participation efforts are by their nature process-oriented, as recipients can engage in substantial outreach and notification, set meeting times and places that are accessible, but not have robust attendance. Further, outreach efforts are usually not limited to notices on buses or trains, but often include radio and television public service announcements, as well as newspaper advertisements. All of these methods will reach non-passengers. Recipients should document their efforts to engage the public. One commenter asked FTA to clarify the relationship between the Title VI Program and the public participation plan, and suggested the Title VI Program be an appendix to the public participation plan. While the public participation plan is an element of a Title VI Program, it is also a stand-alone document, into which Title VI considerations must be integrated. A recipient's public participation plan will cover much more than how to engage minority and LEP

populations. In FTA's view, it would not be appropriate to append the Title VI Program to the public participation plan.

Section 9, Requirement to Provide Meaningful Access to LEP Persons, addresses the existing requirement for a Language Implementation Plan for Limited English Proficient (LEP) persons as well as a summary of the DOT LEP guidance. We proposed including a description of the four factor analysis, information on how to develop a Language Implementation Plan, and a summary of the "safe harbor" provision.

Section 9 is a summary of the LEP requirements outlined in Executive Order 13166, U.S. DOT LEP guidance, and U.S. DOJ LEP guidance. Importantly, FTA cannot make substantive changes to this section except to increase or decrease the amount of information provided. In response to comments, we have provided more guidance related to the four-factor analysis. Much of the information we added comes from a self-assessment tool available on DOJ's LEP website, [www.lep.gov](http://www.lep.gov). Despite commenter's requests to revise or eliminate the safe harbor threshold, the threshold is part of U.S. DOT and U.S. DOJ guidance and FTA cannot issue guidance that is in conflict with these provisions. We would also note that nothing in this section of the Circular is "new" – the Executive Order was issued in August 2000 – so recipients should be conducting four factor analyses and making determinations about which vital documents should be translated, and into what languages. One commenter suggested that the Title VI Notice to Beneficiaries and complaint procedures should be translated; we agree and have included both of these in the non-exhaustive list of vital documents in section 9.b. We decline to include an exhaustive list, but have included several categories of documents,

as well as some specific documents, that should be translated based on a recipient's four factor analysis.

We proposed restoring the requirement, found in the U.S. DOT Title VI regulation 49 CFR part 21, but not Circular 4702.1A, that a recipient may not, on the grounds of race, color, or national origin, “deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.” We proposed that as part of the Title VI Program, for non-elected transit planning, advisory, or similar decision-making body, recipients shall provide a table depicting the racial breakdown of the membership of those bodies, and a description of the efforts made to encourage participation of minorities on such decision-making bodies. FTA received a number of comments on this proposal, generally stating that recipients often do not have control over who is appointed to a board of directors or other decision-making entity. In response, we have revised this section to align more closely with the regulation – it applies to planning and advisory councils or committees that are selected by a recipient, such as Community Advisory Committees, Access Committees, and other types of committees that have an advisory role to an entities' general manager or board of directors but not the board itself. In response to comments, we removed the requirement that such committees be representative of the demographics of the communities they serve; however, recipients must document their efforts to encourage the participation of minorities on such committees.

We proposed moving the topics, “Providing Assistance to Subrecipients” and “Monitoring Subrecipients,” found in the Requirements for States chapter of Circular 4702.1A, to this chapter, as these are existing requirements that are applicable to all

recipients that pass funds through to subrecipients, not just States. The requirement to collect Title VI Programs from subrecipients is a new requirement for transit providers that pass funds through to subrecipients, but we note that anytime a recipient passes funds through to a subrecipient, the entity passing funds through is responsible for ensuring its subrecipients are complying with all Federal requirements, not just Title VI. For those commenters concerned about the large number of Title VI Programs they will receive, and potential storage issues, subrecipient Title VI Programs may be stored electronically. Collecting and reviewing each subrecipient's Title VI Program will assist the primary recipient/transit provider in ensuring all subrecipients are in compliance. The language in these sections is substantially similar to the language in Circular 4702.1A.

For section 10, Providing Assistance to Subrecipients, commenters suggested that the provision that primary recipients “should consider” providing information to subrecipients should be a requirement, and requested that FTA state that primary recipients should provide a means by which all subrecipients can collect and share data. We decline to mandate providing specific information to subrecipients, as not all subrecipients will need the same types of information from the primary recipient. We have added language regarding a central repository for information for subrecipients.

FTA received several comments on section 11, Monitoring Subrecipients. A key point that primary recipients should understand is that if the subrecipient is out of compliance with Title VI – or any other Federal requirement – then so is the primary recipient. Thus, it is in the best interest of the primary recipient to both assist its subrecipients with compliance, and monitor that compliance. In response to comments, we have revised the text to state that primary recipients must collect and review

subrecipients' Title VI Programs. The Circular does not specify exactly how a primary recipient shall monitor a subrecipient's compliance, just that the primary recipient is responsible for documenting its process for ensuring subrecipients are complying with Title VI.

One commenter suggested that FTA develop a program of training and assistance to aid primary recipients in carrying out technical assistance for subrecipients. FTA will conduct ongoing training through webinars and in-person presentations in order to ensure recipients and subrecipients understand the requirements of the new Circular. Some commenters expressed a preference for thresholds for subrecipient reporting and monitoring, such that subrecipients that receive less than 'x' dollars would not be required to report to the primary recipient, and the primary recipient would not be required to monitor the subrecipients. FTA has taken steps to scale various requirements based on size of agency and number of people served, but all recipients and subrecipients must develop and submit Title VI Programs, all are monitored for compliance, whether by FTA or a primary recipient, and all must comply with Title VI. One commenter asked about the authority for primary recipients to enforce subrecipient compliance; in FTA's view it is less a matter of enforcement than it is of monitoring and technical assistance. In the event of a complaint to FTA about subrecipient noncompliance, FTA would investigate and take appropriate enforcement action.

Several commenters expressed concern about FTA's proposal that relieves primary recipients of the responsibility for monitoring subrecipients when those subrecipients also receive funds directly from FTA, and, therefore, report to FTA directly. Some cited a recent Ninth Circuit case, Armstrong v. Schwarzenegger, 622 F.3d

1058 (9th Cir. 2010), in support of their position that a primary recipient's obligations under Title VI are not delegable. Each year, FTA publishes an apportionment notice, apportioning funds to designated recipients, which are designated by law to receive and apportion FTA funds. In many instances, the designated recipients do not actually receive the funds; they allocate the funds to entities in their region that apply for funds directly from FTA. These "direct recipients" enter into a supplemental agreement with FTA and the designated recipient for projects the designated recipient does not carry out itself. The supplemental agreement allows the direct recipient to apply for funds directly from FTA, and provides that the direct recipient will assume all responsibilities as set forth in the grant agreement. Further, the agreement provides that FTA and the direct recipient agree that "the Designated Recipient is not in any manner subject to or responsible for the terms and conditions of this Grant Agreement." Each grant agreement incorporates the terms of FTA's Master Agreement, which includes a provision that requires recipients to comply with Title VI. As a party to the supplemental agreement, FTA is therefore on notice that the direct recipient will be applying for funds and will be submitting a Title VI Program to FTA every three years.

Sometimes, a designated recipient will carry out projects itself or through subrecipients. Some of these subrecipients may also be direct recipients. Since these direct recipients are responsible for reporting to FTA, there is no need for them to also submit Title VI Programs to the designated (primary) recipient, and the primary recipient is not responsible for monitoring compliance of that subrecipient. FTA believes that a requirement for dual reporting, as suggested by commenters, would be overly burdensome and would not result in improved compliance with Title VI.

Finally, we have removed the section, “Guidance on Conducting an Analysis of Construction Projects” and inserted in its place, “Determination of Site or Location of Facilities.” The language in Circular 4702.1A addresses environmental justice concepts as incorporated into National Environmental Policy Act (NEPA) documentation, and we have moved this analysis to the EJ Circular. We proposed revising this section so that it cites the DOT Title VI regulation and describes the requirements related to siting facilities. Recipients must complete a Title VI analysis during project development to determine if the project will have disparate impacts on the basis of race, color, or national origin. If it will have such impacts, the recipient may only locate the project in that location if there is a substantial legitimate justification for locating the project there, and there are no alternative locations that would have a less adverse impact on members of a group protected under Title VI.

Most of the comments on this section asked for examples of what constitutes a facility or project. We have revised this section to clarify that bus shelters are not facilities, since those are covered in transit amenities in Chapter IV. The types of projects to which this section applies include vehicle storage facilities, parking lots, maintenance and operations facilities, etc. Projects related to passenger service, such as power substations for light rail, passenger stations, etc., will be evaluated during project development and the NEPA process.

E. Chapter IV – Requirements and Guidelines for Fixed Route Transit Providers

Chapter IV covers much of the information that is in Chapter V of Circular 4702.1A. Consistent with our desire to have the chapters follow the same format, this chapter starts with an introduction, includes a description as to which entities it applies,



and then describes the requirement to prepare and submit a Title VI Program, followed by specific information related to each of the elements contained in the Title VI Program.

In Circular 4702.1A, Chapter V applies to “recipients that provide service to geographic areas with a population of 200,000 people or greater under 49 U.S.C. 5307.” This sentence has created some confusion as to whether recipients in areas with populations over 200,000 but that do not receive funds under 49 U.S.C. 5307 are required to comply with this chapter. In order to eliminate this confusion, we proposed a new threshold: Any provider of public transportation, whether a State, regional or local entity, and inclusive of public and private entities, with an annual operating budget of less than \$10 million per year in three of the last five fiscal years as reported to the National Transit Database (NTD) would only be required to set system-wide standards and policies. Providers of public transportation (also referred to as transit providers) with an annual operating budget of \$10 million or more in three of the last five consecutive years as reported to the NTD; transit providers with an annual operating budget of less than \$10 million but that receive \$3 million or more in New Starts, Small Starts or other discretionary capital funds; and transit providers that have been placed in this category at the discretion of the Director of the Office of Civil Rights in consultation with the FTA Administrator, would be required to set system-wide standards and policies, collect and report demographic data, conduct service and fare equity analyses, and monitor their transit service.

FTA received numerous comments on this proposal, many from transit providers in small urbanized areas with annual operating budgets of \$15-20 million. Some of the commenter’s stated objections included: this change would result in a new unfunded

mandate on transit systems in small urban and rural areas; the reporting requirements would have budgetary impacts that would affect the provision of transit service; lumping providers in small and rural areas with large urbanized areas was unreasonable; and the \$3 million discretionary grant threshold would discourage small providers from applying for those grants. Commenters made a number of suggestions for alternative thresholds, including keeping the same threshold that is in Circular 4702.1A, using the NTD small system waiver for providers with fewer than 30 vehicles in peak service, and using a 100 bus threshold. In addition, many rural and small urban providers questioned the applicability of the reporting requirements to general public demand response service.

In response to comments, and after examining several options, FTA agrees that this chapter will apply only to fixed route transit providers. Further, only transit providers in large urbanized areas with 50 or more fixed route vehicles in peak service will be responsible for the more comprehensive reporting requirements. “Vehicles” includes any vehicle used in revenue service, such as buses, ferries, and railcars. All other fixed route transit providers, regardless of population of the area, will only be required to set system-wide standards and policies. In the Circular we have clarified that providers that only operate general public demand response, Americans with Disabilities Act complementary paratransit, vanpools, and section 5310 non-profits that serve only their own clientele (closed-door service) will be responsible only for Chapter III reporting requirements.

This threshold ensures that small transit providers in large urbanized areas will no longer be required to collect and report data, conduct service and fare equity analyses, and monitor their transit service. We have retained the provision that allows the Director

of the Office of Civil Rights, in consultation with the FTA Administrator, to require a recipient to submit a more comprehensive Title VI Program, as when a transit provider has a one-time or ongoing issue, likely related to a complaint or otherwise compliance-related.

We proposed revising the description of the requirement in Circular 4702.1A to set system-wide service standards and policies. We proposed removing the “transit security” policy, as a transit provider’s security policy may be impacted by considerable outside factors that are not within the control of the transit provider. We proposed blending the requirements in one section that covers both standards and policies, rather than listing them separately. In the final Circular, the standards and policies for vehicle load, vehicle headway, on-time performance, service availability, transit amenities and vehicle assignment remain substantially the same as proposed, except we removed intelligent transportation systems (ITS) from the list of amenities. In Circular 4702.1A, FTA recommends that recipients report on these standards and policies, and allows recipients to report on other standards and policies. In contrast to Circular 4702.1A, we proposed that recipients will be required to report on these specific standards and policies, rather than selecting different measures on which to report. In practice, this is not a significant change, since most transit providers report on these standards and policies, and do not select other standards or policies on which to report.

As discussed above, the requirement to set system-wide service standards and policies will apply to all fixed route transit providers, regardless of population of the service area. The requirement to set these standards and policies is a new one for fixed route transit providers in small urban and rural areas. Some commenters located in these

areas stated they are not currently developing standards, and in some cases they do not have the personnel or technology to capture on-time performance or vehicle load data. From a business and customer service perspective, it is important for transit providers to know if their routes are running on time and how often or whether there is standing-room-only space on the bus. These measures are not difficult to capture, and this sort of basic data helps transit providers plan and ensure they are providing a quality service. It is likely that FTA would only ask for monitoring data from these transit providers in the event there is a complaint or a problem noted in a compliance review.

FTA has adopted the proposed requirement that all fixed route providers will report on the same standards and policies. Upon review of issues raised by commenters, we have clarified that transit providers will set service standards by mode, and the standards for each mode may be different. For example, a transit provider with local bus service, bus rapid transit (BRT) and light rail will likely have different vehicle load standards and headways depending on the mode, ridership, peak and off-peak weekday hours, weekends, owl service, etc. Even on-time performance standards may be different, given that light rail and possibly BRT travels on an exclusive fixed guideway, where local bus service travels with other traffic. In addition, the standards are transit provider-specific, not industry-specific or even region-specific, and will depend on the characteristics and nature of the service being provided.

Some commenters questioned the relevance of the standards and policies in the circular, and preferred to develop alternative standards and policies. The standards and policies that FTA is requiring transit providers to set are directly related to what passengers experience. Frequency of service, on-time performance, the presence or

absence of bus shelters and trash cans are part of the customer experience, and are important not only from a Title VI perspective, which strives to ensure that all passengers are having similar experiences regardless of race, color, or national origin, but also from a customer service perspective generally. The circular does not require a specific frequency of service, set a vehicle load standard, or mandate a certain level of service availability. These are all local decisions. Once the transit provider has made these decisions, by setting its own system-wide standards and policies, it has an obligation to ensure the service is provided in a nondiscriminatory manner.

Circular 4702.1A allows transit providers to choose among options for demographic data collection, service monitoring, and service and fare equity analyses. These options were added during the last revision of the Circular in 2007, to “reduce administrative burdens by giving recipients and subrecipients greater flexibility to meet requirements through procedures that best match their resources needs, and standard practices.” (72 FR 18732, 18735, Apr. 13, 2007). In reality, providing options, including the option to develop a local alternative, has created confusion and inconsistency. Therefore, we proposed removing the options and providing one method of compliance for each of these areas. By eliminating options and clearly stating what is required for compliance, we add certainty for recipients and streamline the Title VI Program review process. Only a few commenters objected to FTA removing the options, and for the reasons stated above, we have adopted the proposal to remove options and have just one method of compliance.

The requirement to collect and report demographic data applies only to transit providers with 50 or more fixed route vehicles in peak service in large urbanized areas.

Circular 4702.1A allowed three different options for collecting and reporting demographic data. We proposed eliminating the options and requiring one method of compliance with a simplified and streamlined customer survey data requirement. In Circular 4702.1A, transit providers are required to collect data on travel time, number of transfers, overall cost of the trip, as well as how people rate the quality of service. We proposed instead that transit providers collect data on travel patterns, such as trip purpose and frequency of use.

Commenters expressed concern about the requirement that surveys be conducted every three years, citing the cost of such surveys as a barrier to implementation. In response, FTA has changed the required frequency to not less than every five years. Surveys may be completed in conjunction with other surveys, such as origin and destination surveys used to update travel demand models. Several commenters suggested that Census block groups may provide better data than Census tracts; we agree and have added Census block groups as an option for the demographic maps. Some commenters requested that Census data be the basis for demographic information, as opposed to surveys. Census data is very useful for determining the demographics of a service area, but is not necessarily indicative of the demographics of a transit provider's ridership. When transit providers have ridership data, they can more accurately identify minority and non-minority routes and determine travel patterns, which will assist in determining frequency of use, how many passengers must transfer to get from their origins to their destinations, etc. Commenters suggested that American Community Survey may be a better source of community demographic data, especially between Census counts. FTA has added ACS data as an acceptable source, at the option of the transit provider.

The requirement to monitor transit service applies only to transit providers with 50 or more fixed route vehicles in peak service in large urbanized areas. Circular 4702.1A allows four different options for monitoring service. We proposed removing the options and having one means of complying with the requirement to monitor transit service. As in Circular 4702.1A, transit providers must monitor their transit service against the system-wide standards and policies set by the transit provider. At a minimum, such monitoring will occur every three years and the transit provider will submit the results as part of its Title VI Program. Prior to submitting the information to FTA, we proposed that transit providers will be required to brief their board of directors or appropriate governing entity regarding the results of the monitoring program, and include a copy of the board meeting minutes, resolution, or other appropriate documentation demonstrating the board's consideration of the monitoring program.

Some commenters requested that we consider keeping the local option; as we stated above, by eliminating options and clearly stating what is required for compliance, we add certainty for recipients and streamline the Title VI Program review process, so we have adopted the proposal that there be one method for complying with the service monitoring requirement. We have reorganized this section from what was proposed, without significantly changing the substance. Three commenters asked for further clarification on developing policies or procedures to determine whether disparate impacts exist on the basis of race, color, or national origin; Appendix J provides examples that are illustrative of this determination.

The requirement to perform service and fare equity analyses applies only to transit providers with 50 or more fixed route vehicles in peak service in large urbanized areas.

Circular 4702.1A allows two options for evaluating service and fare changes; we proposed removing the option for a locally developed alternative and having one means of complying with the requirement to perform service and fare equity analyses. We proposed that each transit provider to which this section applies will: describe in its service equity analysis its policy for a major service change; describe how the public was engaged in the development of the major service change policy; describe the datasets the provider will use in the service change analysis; prepare maps; analyze the effects of proposed service changes; and analyze the effects of proposed fare changes. In addition, we proposed the transit provider will assess the alternatives available for people affected by the fare increase or decrease or major service change, including reductions or increases in service. Finally, we proposed the transit provider will determine if the proposals would have the effect of disproportionately excluding or adversely affecting people on the basis of race, color, or national origin, or would have a disproportionately high and adverse effect on minority or low-income riders.

FTA received numerous comments on the service and fare equity section of this chapter. Beginning with the definition of a major service change, commenters suggested that transit agencies be required to define major service change based on actual changes implemented in the previous 3-5 years; suggested that FTA should define what constitutes a major service change, so there isn't a "hodgepodge" of major service change policies around the country; and suggested that FTA require that major service change policies account for cumulative impacts of service changes. We decline to accept these suggestions; however, we have added language to this section that requires transit providers to engage the public when establishing the threshold for a major service



change. In addition, we have added language suggesting that the threshold for analysis should not be set so high so as to never require an analysis; and, because the amount of service varies from community to community, we have stated that the threshold should be selected in order to yield a meaningful result in light of the transit provider's system characteristics.

Commenters had a number of questions and suggestions about when to conduct a service and fare equity analysis, how to determine if there is a disparate impact, how to conduct separate Title VI and environmental justice analyses, and when a service and fare equity analysis must be submitted to FTA. In response to these and other comments, as well as in response to recent compliance reviews and other events that have occurred since we published the proposed Circular, we carefully reviewed the disparate impact case law and re-drafted this section in order to provide better guidance to transit providers about how to conduct these analyses. We have added a section on developing a disparate impact policy and clearly defined the legal test. We have removed the reference to minority transit route for service equity analyses, and instead provide guidance on how to select the appropriate comparison populations with which to compare the impacts on minority populations. We have separated out the Title VI and EJ analyses and clarified that if there are populations that are both minority and low-income, then a Title VI disparate impact analysis must be completed. Only when an affected population is solely low-income would a transit provider conduct an EJ analysis. Service and fare equity analyses must be submitted to FTA every three years when the transit provider submits the Title VI Program; however, FTA is available to provide technical assistance to transit

providers, and in the event of a complaint, may ask to see a service and fare equity analysis in advance of a Title VI Program submission.

A number of commenters suggested that temporary, short-term, or promotional fares should be exempt from a fare equity analysis. We agree and have added three exceptions to the requirement that fare equity analyses be completed prior to fare changes. “Spare the air days” or other promotional “everyone rides free” days do not require a fare equity analysis, since all passengers will ride for free. In addition, a promotional fare reduction that will last six months or less does not need to be analyzed in advance. If the fare becomes permanent or otherwise lasts longer than six months, then the transit provider must conduct a fare equity analysis. Third, a temporary fare reduction that is a mitigating measure for another action, such as closure of rail stations that requires passengers to alter their travel patterns, does not require a fare equity analysis. Several commenters suggested that agreements for free or reduced fares provided to individuals in exchange for a community or sponsor subsidy should not be subject to equity analysis. It seems to us that in this situation, the transit provider has set the fare and someone other than the passenger is paying for it. In this case, we agree that a fare equity analysis is not required unless the transit provider changes the fare.

Finally, we proposed that a transit provider would be required to perform fare and service analyses for New Starts, Small Starts, and other new fixed guideway capital projects prior to entering into a Full Funding Grant Agreement (FFGA) or Project Construction Grant Agreement (PCGA), and updated immediately prior to start of revenue operations. Commenters generally objected to doing a service and fare equity analysis at the time of an FFGA or PCGA, as the project could still be many years from

revenue operation. We agree and have revised this requirement accordingly, such that a service and fare equity analysis must be completed when the project is six months from revenue operation. At the suggestion of a commenter, we have also removed the reference to Federal funding of the project as a condition for conducting the service and fare equity analyses. Pursuant to the Civil Rights Restoration Act of 1987, it does not matter if the specific project receives Federal funding if the transit provider receives Federal funding.

#### F. Chapter V – Requirements for States

This chapter addresses requirements for States that administer FTA programs. As in Circular 4702.1A, States must submit a Title VI Program. This chapter clarifies that States are responsible for including in their Title VI Program the information required from all recipients in Chapter III, and that States providing fixed route public transportation are responsible for the reporting requirements for providers of fixed route public transportation in Chapter IV, in addition to the information required in Chapter V. For clarity, we proposed including as required elements in the Title VI Program all of the elements under the “Planning” section in Circular 4702.1A, as well as the elements listed for the Title VI Program in the existing Circular. We also proposed cross-referencing information related to Title VI that FTA and FHWA jointly assess and evaluate during the planning certification reviews. As in Circular 4702.1A, States are responsible for monitoring their subrecipients, whether those are planning subrecipients or transit provider subrecipients.

FTA received a few comments on this chapter and we have made several revisions. As with other primary recipients, we have removed the requirement that States

submit subrecipient Title VI Programs to FTA. States shall collect subrecipient's Title VI Programs, on a schedule determined by the State, and those submissions may be staggered. Title VI Programs may be collected and stored electronically. We have clarified that demographic maps shall analyze the impacts of the distribution of State and Federal funds in the aggregate for public transportation purposes, clarified that these maps should be developed using Census or ACS data, and that minority data may be provided in the aggregate. Commenters asked for clarification on the demographic maps analyzing impacts of the distribution of funds (proposed paragraph V.2.d.) and the analytical process that identifies investments and potential disparate impacts (proposed paragraph V.2.f.). We have more clearly stated the expectation and provided the disparate impact legal test. Some commenters asked about subrecipient reporting requirements; we direct readers to this discussion in Chapter III – to reduce the burden on primary recipients and subrecipients, subrecipients may choose to adopt the primary recipient's notice to beneficiaries, complaint procedures and complaint form, public participation plan, and language assistance plan.

G. Chapter VI – Requirements for Metropolitan Planning Organizations

The proposed chapter VI equates to chapter VII in Circular 4702.1A. While MPOs are required, in Circular 4702.1A, to submit a Title VI Program, the chapter is not clear that the information listed is supposed to be included in the Title VI Program, along with the requirements for all recipients. Therefore, we proposed a substantial rewrite of this chapter that clarified the reporting requirements. Since an MPO may fulfill several roles, including planning entity, designated recipient, direct recipient of FTA funds, and a

primary recipient that passes funds through to subrecipients, we clarified the Title VI reporting requirements for each of these roles.

MPOs were generally supportive of the changes to this chapter. Some of the reporting requirements for States and MPO's are the same, so we have made the same changes to the MPO chapter that we made to the State chapter; namely, that minority data may be obtained from the Census or ACS, the data may be aggregated, State and Federal funding may be aggregated, and we have provided the disparate impact legal test. Commenters suggested that for both Chapter V and Chapter VI, States and MPOs be required to use demographic maps that show data at the Census block group level. While it may be appropriate to do some planning analysis at that level, particularly for fixed projects such as maintenance facilities, we decline to require this. We have clarified in both chapters that data should be displayed at the Census tract or block group level. Some commenters requested comprehensive guidance on the planning process be included in the Title VI Circular; however, FTA and FHWA have developed comprehensive guidance on this process and we do not believe it needs to be stated in the Title VI Circular. Some commenters expressed a preference to keep the MPO Title VI reporting requirement to every four years; however, as discussed above, FTA has determined that all recipients will be on a three-year schedule.

#### H. Chapter VII – Effecting Compliance with DOT Title VI Regulations

This chapter is Chapter X in Circular 4702.1A. FTA believes it makes sense from a flow and format point of view to move this chapter up, followed by compliance reviews in Chapter VIII and complaints in Chapter IX. This chapter generally tracks the DOT Title VI regulation at 49 CFR Sections 21.13 and 21.15.

Some commenters suggested there should be a public participation process for the development of corrective action plans for noncompliant recipients. One commenter suggested that recipients should submit a copy of the board resolution, meeting minutes, or similar documentation with evidence that the board of directors or appropriate governing entity or official(s) has approved the remedial action plan. We decline to include a public participation component in the development of a corrective action plan, but having the plan approved by the board of directors or appropriate governing entity means the plan will be available to the public. We revised this chapter accordingly.

#### I. Chapter VIII – Compliance Reviews

Chapter VIII, Compliance Reviews, is substantially similar to Chapter VII of the same name in Circular 4702.1A. We proposed removing from the list of criteria, “the length of time since the last compliance review,” as in practice FTA has not used this criterion. As in other chapters, we use the word “recipient” to include subrecipients. In Section 6, we proposed removing the opportunity for recipients to review and comment on a draft compliance review. This is consistent with changes we are making in other civil rights processes, and generated the most comments. We decline to put this provision back in the Circular, as recipients participate in an exit interview with the compliance review team, so there should be no surprises in the final report. In addition, there is opportunity to provide information to the review team subsequent to the completion of the review and prior to publication of a final report.

#### J. Chapter IX – Complaints

The proposed Chapter IX contains most of the same content that is Chapter IX of Circular 4702.1A. FTA proposed removing the “letter of resolution” in Section 4 as it is

duplicative of the “letter of finding” issued when a recipient is found to be noncompliant with the DOT Title VI regulations. We also proposed removing the appeals process, as it is not required by the regulation and removing it will assist with more efficient administration of the Title VI Program. We have added information relating to when a complaint will be administratively closed.

Several commenters suggested that FTA notify complainants once their complaint has been accepted, notify complainants if FTA finds noncompliance following a complaint, and define timelines for resolutions of complaints to FTA. FTA does notify complainants of the status of their complaints, and provides a letter at the conclusion of an investigation as to the findings, as stated in section 5 of this chapter. We decline to include timelines, as the amount of time it takes to investigate and resolve a complaint depends on a number of factors, including the complexity of the complaint. Commenters requested that we reinstate the appeals process language, but we decline to do so. In the event a complainant is not satisfied with the outcome, complainants may contact FTA’s Civil Rights Office to discuss.

#### K. Appendices

The proposed appendices are intended as tools to assist recipients in their compliance efforts. FTA proposed adding nearly 40 pages of appendices in order to provide more clarity and examples of what must be included in a Title VI Program and the type of analysis that recipients shall conduct.

Numerous commenters stated that the appendices would be very helpful to recipients. The vast majority of comments received on the appendices have already been addressed in the chapters in which the requirements are described. Some commenters

asked that FTA be consistent between what is described in the chapter and what is provided in the appendices; we have taken a very careful look and made sure that the information is consistent. A couple of commenters suggested that FTA include a fictitious agency's Title VI Program in the appendix; we have included examples of almost every item in a Title VI Program, and we believe the information we have provided should be very beneficial to recipients as they put their Title VI Programs together.

To begin, in Appendix A we added checklists for the elements recipients must include in their Title VI Programs. Recipients can literally “check the box” as they assemble the elements of their Title VI Program.

Appendices B, C and D contain sample procedures and forms that recipients may use as provided, or that they may modify. Appendix B contains a sample Title VI Notice to the public. Appendix C contains a sample Title VI complaint procedure, and Appendix D contains a sample Title VI Complaint Form. All of these documents are “vital documents” for LEP purposes, and each appendix provides information about providing the information in other languages as appropriate.

Appendix E provides a sample form recipients may use for tracking transit-related Title VI investigations, lawsuits and complaints. Appendix F contains a sample table depicting the racial breakdown of the membership of various non-elected bodies, the membership of which is selected by the recipient.

Appendix G contains samples for reporting service standards (vehicle load, vehicle headway, on-time performance, service availability) and Appendix H contains samples for reporting service policies (vehicle assignment and transit amenities). For the



service standards for vehicle load and vehicle headway, we have provided two methods of expressing the standard: in writing and in table format. Recipients should provide both the written description and the table when they submit the information in their Title VI Program. The service standards for on-time performance and service availability, as well as the service policies, require a written explanation only.

Appendix I provides sample demographic and service profile maps and charts. Appendix J provides information on reporting the requirement to monitor transit service. The appendix provides tables and maps as examples of how to assess the performance of service on minority and non-minority transit routes for each of the recipient's service standards and service policies. The appendix provides sample tables and written explanations for each of the service standards and policies. These tables are examples of what recipients should submit with their Title VI Programs. Unless requested to verify the information, FTA does not need the raw data generated through the monitoring process.

Appendix K provides checklists for a major service change policy, disparate impact policy, the considerations for a service equity analysis, and considerations for a fare equity analysis. Use of these checklists will assist transit providers in ensuring they have met the requirements of analyzing major service changes and fare changes.

Appendix L provides information on the various types of recipients and the reporting requirements for each type of recipient. There are five flow charts that provide a pictorial representation of the reporting requirements. Finally, Appendix M contains

the same content as Appendix D in the current Circular. This appendix provides technical assistance resources for Title VI and Limited English Proficiency.

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Peter Rogoff  
Administrator

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